IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12649 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAMPABEN HARIBHAI BARAIYA THRO' WIFE HARIBHAI LAXMANBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR SHAKTISINH GOHIL for Petitioner

MR SAMIR DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/05/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioner, wife of the detenu is challenging the order of the district Magistrate, Bhavnagar, dated 18.11.2000 under which, in exercise of powers as

conferred under section 3, sub-section 2 of the Gujarat Prevention of Anti Social Activities Act, 1985, the husband of the petitioner was detained as a bootlegger for his alleged antisocial activities.

#. Challenging the validity, propriety and correctness of this order, the learned counsel for the petitioner raised manifold contentions but as this petition deserves acceptance only on one ground, I do not consider it to be necessary as well as in the interest of justice to save valuable judicial time of this court to mention all these contentions and to record findings thereon and give decision.

#. One of the contention raised by learned counsel for the petitioner is that there is unexplained inordinate delay in passing of the detention order. The averment in support of this contention is made by petitioner in paragraph-6 of the special civil application which reads as under:

"6. The petitioner further states and submits that along with the ground of detention, there are 4 statements of anonymous witnesses are recorded on dated 19.10.2000. In the said statements also the incident, which are narrated by the witnesses are all dated 20.3.2000, whereas in all 4 cases, which are registered against the detenu out of which the last case which was registered against the detenu on dated 19.7.2000, and thereafter, the detention order was passed against the detenu on 18.11.2000 which shows that there is a delay of about 3 months in passing the detention order from the registration of last case registered against detenu and hence, on this ground, the detention order passed against the detenu is required to be quashed and set aside."

#. Reply to the special civil application has been filed by the detaining authority and the averments made by petitioner in paragraph-6 of the special civil application are replied in paragraph-6 of the affidavit-in-reply which reads as under:

"6. With reference to para 6 of the petition, I say that after the last offence, the petitioner has continued his antisocial activities which are clearly disclosed from the statements of witnesses in the unregistered offences. Therefore for collecting necessary information and for following necessary procedure, some time

was taken before passing the order of detention and as such there is no delay in passing the order of detention. Therefore the contention raised by the detenu in this para is not tenable at law."

#. The learned counsel for the respondents supports the order of the detaining authority.

#. Having given my thoughtful considerations to the submissions made by learned counsel for the petitioner, I am satisfied that this is a case where there is unexplained inordinate delay in passing of the detention order. Last criminal complaint for the offence under the Prohibition Act was registered against the petitioner on 26.7.2000 at Talaja Police Station. In paragraph 6 of the special civil application it is stated that the incidents narrated of four privileged four witnesses in their statements dated 19.10.2000 relate to 20.3.2000. The explanation which has been furnished by the detaining authority for this delay in passing of the detention order is wholly untenable and unbelievable. All the incidents of the unregistered cases are prior to the registration of last criminal complaint against the petitioner. So it is incorrect to state on the part of the detaining authority that after the last offence, the petitioner continued his antisocial activities which are clearly disclosed from the statements of witnesses. The unregistered offences pertain to period 20.3.2000, how far it can be accepted that the petitioner's continuous activities and to collect necessary information some time has been taken. Specific averment made by petitioner that all the four instances of the unregistered offences pertain to 20.3.2000 has not been denied in paragraph-6 of the reply to the special civil application. This matter is squarely covered by decision of the Apex court in the case of T.A.Abdul Rahman v. State of Kerala & ors., reported in AIR 1990 SC 225. In paragraph-11 of the judgment, their Lordships of Hon'ble Supreme Court held:

"11. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and

> no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

#. In the result, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 18.11.2000 is quashed and set aside. The detenu Haribhai Laxmanbhai Baraya, at present at Special Jail Porbandar, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute.

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(sunil)